



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1993

Mr. S. Anthony Safi
Mounce & Galatzan
P.O. Drawer 1977
El Paso, Texas 79950-1977

OR93-254

Dear Mr. Safi:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18792.

The El Paso Independent School District (the "district") received an open records request for certain information the district submitted to the Texas Commission on Human Rights (the "commission") regarding a complaint filed by the requestor against the district. You contend that the requested information comes under the protection of sections 3(a)(1), 3(a)(3), and 3(a)(11) of the Open Records Act.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You contend that the district's response to the commission is made confidential by section 8.02(a) of article 5221k, V.T.C.S., which provides in pertinent part that

[a]n officer or employee *of the commission* may not make public any information obtained by the commission under its authority under Section 6.01 of this Act except as necessary to the conduct of a proceeding under this Act. [Emphasis added.]

This prohibition on the release of information does not, however, apply to district employees. Cf. Open Records Decision No. 155 (1977) (copy enclosed). Consequently, while article 5221k makes certain information held by the commission confidential¹, this confidentiality does not extend to the same information held by the district.

¹We note, however, that section 8.02(a) also provides that the commission "shall adopt rules that allow a party to a complaint filed under Section 6.01 reasonable access to the commission records relating to the complaint."

We next consider your section 3(a)(3) claim. To secure the protection of section 3(a)(3), the "litigation" exception, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision Nos. 588 (1991); 452 (1986). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision Nos. 437 (1986); 331, 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. Open Records Decision Nos. 437, 331, 328.

You contend that because the requestor's complaint is currently pending before the commission, the requested information "relates" to reasonably anticipated litigation and thus may be withheld pursuant to section 3(a)(3). We agree. This office has previously held that the pendency of a complaint before the Equal Employment Opportunity Commission indicates a substantial likelihood of litigation and is therefore sufficient to satisfy section 3(a)(3). See Open Records Decision No. 386 (1983) and authorities cited therein. The logic of those decisions clearly also applies here. The district may therefore withhold the requested information pursuant to section 3(a)(3) at this time.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Toya C. Cook
Assistant Attorney General
Opinion Committee

TCC/RWP/le

Ref.: ID# 18792

Enclosures: Open Records Decision No. 155

cc: Mr. Raul Garcia
214 De Vargas Street - #A
El Paso, Texas 79905
(w/o enclosures)

²Because we resolve this issue on other grounds, we need not address your section 3(a)(11) claims.